

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

**BEST MEDICAL INTERNATIONAL, INC.,**

*Plaintiff,*

**V.**

**ACCURAY, INC., a Corporation**

### *Defendants*

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**No. 2:10-cv-01043-TFM**

**RULE 53 AFFIDAVIT OF  
GALE R. PETERSON**

I, Gale R. Peterson, do state and declare as follows:

1. FED. R. CIV. P. 53(b)(3), as amended and effective on December 1, 2003, requires:

(3) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455 and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

2. 28 U.S.C. § 455 provides, in part:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

- (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceed-

ing or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

3. I am not aware of any ground under § 455 that would disqualify me from serving as special master in this cause.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 24<sup>th</sup> Day of May, 2011, in San Antonio, Texas.

/s/ Gale R. Peterson

Gale R. Peterson

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2011, I electronically filed the foregoing with the Clerk using the CM/ECF system which will send notification to the following parties:

**For Plaintiffs Best Medical International, LP.**

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and delivered a chambers copy via ( x ) Federal Express or ( ) U.S. Mail to:

The Honorable Terrence F. McVerry  
Western District of Pennsylvania  
700 Grant Street  
6th Floor, Courtroom Number 6C, Room Number 6370  
Pittsburgh, PA 15219

/s/ Gale R. Peterson

Gale R. Peterson, Special Master